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Congress of the United States

House of Representatives

Washington, D.C. 20515

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July 31, 1978

Dear Colleague:

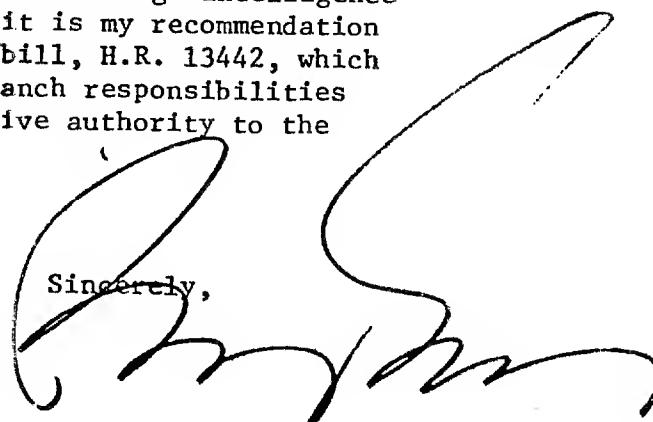
An article in the current issue of AIR FORCE Magazine calls attention to the serious threat to our national security which would result from passage of the Administration's Foreign Intelligence Surveillance Act (H.R.7308).

I am attaching reprints of several pages from this magazine and would draw your special attention to page 13, "Tighter Senate Shackles for Intelligence."

In line with the editor's comments, I hope that you will consider substantial amendments to the pending legislation so as to eliminate the "special court" and "judicial warrant" requirements for foreign intelligence gathering. In the alternative, it is my recommendation that you support the substitute bill, H.R. 13442, which would impose strict Executive Branch responsibilities without transferring such executive authority to the Judiciary.

With best wishes, I am

Sincerely,



Bob Sikes

S/jt



In this preprint of AIR FORCE Magazine's
"In Focus . . ." column for the August 1978
issue, Senior Editor Edgar Ulsamer reports
on the damage to national security that could
be done by the Foreign Intelligence Surveil-
lance Act of 1978 as passed by the Senate, and
on proposed corrective action embodied in
H.R. 9745 -- reintroduced as H.R. 13442.
Your attention is called to the item headed
"Tighter Senate Shackles for Intelligence."

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In focus...

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BY EDGAR ULSAMER, SENIOR EDITOR

Washington, D. C., July 5 New Space Policy

On May 11, 1978, President Jimmy Carter committed the nation to a new space policy by signing PDM (Presidential Decision Memorandum)-37. The policy statement breaks new ground in projecting the principle of sovereign rights—and the right to defend them—into space. Asserting that any nation's space systems are "national property" entitled to free passage and unhampered operation, PDM-37 commits the nation to "activities in space in support of its right of self-defense and thereby strengthen national security, the deterrence of attack, and arms control agreements."

While seeking verifiable, comprehensive limits on antisatellite capabilities and their use, the US, in the absence of such an agreement, "will vigorously pursue development of its own capabilities. The US space defense program shall include an integrated attack warning, notification, verification, and contingency reaction capability which can effectively detect and react to threats to US space systems." Though US and Soviet negotiators already have spent a week discussing possible approaches to a verifiable agreement barring space weapons, this column learned that realization of such an accord should be considered a distant goal.

Most senior Administration officials feel that a treaty "freezing" the US and the Soviet Union in their present positions regarding antisatellite weapons (ASAT) is out of the question. The Soviet Union has an operational ASAT launch complex and a fleet of ASATs in being. While these weapons have exhibited some deficiencies during test flights, such as occasionally failing to destroy test targets, and altitude limits below 600 miles, they provide the Soviet Union with a destabilizing lead over the US, whose ASAT program is not yet off the drawing board. Most experts believe, therefore, that the US must draw abreast

of Soviet ASAT capabilities before a treaty banning development and deployment of space weapons can be entered into.

The incipient US ASAT program concurrently is developing a number of technological options, some of which involve capabilities attainable only at great technological risk. High-energy laser weapons, viewed as the most versatile long-term approach, fall in this category. A technologically more "mature" US ASAT design centers on a modified SRAM—equipped with a miniature homing device to be launched by high-flying aircraft. The Army's HIT (Homing Interceptor Technology) program, developed originally for ballistic missile defense, was transferred to USAF to serve as a forerunner of a miniature homing device. An aircraft-launched ASAT would be limited to operation against hostile spacecraft in low-altitude orbits.

For that reason, another design approach is being pursued, involving a missile booster that delivers a warhead/homing device combination to higher orbital altitudes. This basic concept is being explored in a variety of ways to provide the capability of intercepting across a wide range of altitudes and modes.

Lastly, advanced jamming and other countermeasure technologies to frustrate Soviet space weapons are being studied under the ASAT program. According to an Administration official who declined to be named, "If we want an ASAT capability, we can achieve one that is high quality, that is as good or better than theirs." President Carter, as yet, has not authorized go-ahead on an operational ASAT system, even though PDM-37 asserts that "the United States finds itself under increasing pressure to field an antisatellite capability of its own in response to Soviet activities in this area."

The new policy statement directs the Secretary of Defense to set up a space counterpart to the Civil Reserve Air Fleet (CRAF) through a

military operations during national emergencies. In the main, this means adding encrypting packages to important nonmilitary satellites to prevent the Soviets "from taking over these systems" in wartime. For the moment, such militarily important systems as the civilian US weather satellites are vulnerable to acts of space piracy. The only alternative would be their destruction by commanding these spacecraft to spin out of control. PDM-37 seemingly provides the option to place military payloads on nonmilitary satellites in "piggyback fashion," to increase redundancy. Hardening civilian satellites earmarked for military use during crises is also provided for.

While relaxing the limitation on remote earth sensing for civilian purposes by boosting permissible pictorial resolution to ten meters—compared to eighty meters at present—the US government will supervise and control all such information. The idea is to withhold such military information as the location of US or other naval forces from third countries.

Possibly PDM-37's greatest significance lies in a subtle change in relationship between the Intelligence community. In near-absolute control heretofore of space-based intelligence and reconnaissance information, such as that produced by Lockheed's Big Bird satellites, and the military services. Much of this information has been so highly classified by the CIA that it rarely reached the operational level of the military. PDM-37 redresses this incongruity by reducing the classification of such information to assure adequate support of military requirements, especially at the unit level. USAF will continue to operate the nation's secret spacecraft for the CIA.

The Presidential directive sets up an intragovernmental arbiter and ombudsman, the National Security Council Policy Review Committee, to settle routine squabbles, or to channel especially thorny issues to the President for resolution. The committee is chaired by the Director of the Office of Science and Technology Policy, Dr. Frank Press, and includes representatives from DoD, NASA, the CIA, and other government agencies concerned with US space operations.

Tighter Senate Shackles for Intelligence

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Apparently to make up for a previous lack of congressional oversight over US Intelligence operations, the Senate recently passed legislation that could have disastrous consequences for national security. Known as the Foreign Intelligence Surveillance Act of 1978, it is a revolutionary approach to foreign intelligence-gathering that would transfer responsibility for authorizing such actions from the Executive Branch to a "Special Court." The wisdom and constitutionality of the new bill—now before relevant House committees—seem to be flawed on at least two counts: The expertise of federal judges in controlling foreign intelligence is lacking—and has never been sought; also the power to authorize—or refuse to authorize—foreign intelligence-gathering activities traditionally has been exercised by the President and seems granted him under the Constitution, which makes him responsible for all decisions regarding national security. To treat decisions on foreign intelligence as anything other than integral issues of national defense seems illogical.

As Congressman Robert McCloskey (R-Ill.), a member of both the House Judiciary Committee and the Permanent Select Committee on Intelligence, told this column: "To pass the buck on such decision-making to a special court might give an appearance of safeguarding individual rights or justifying Executive decision-making. However, it is inherently dangerous to our national security because of the delays and frustrations which might result, and it is an unjustified attempt to excuse the President from a Constitutional responsibility and accountability which he should be required to assume."

The stringent guidelines of Executive Order 11905, issued by President Ford in the wake of Watergate to preclude abuses by the intelligence community, and supplemental instructions by President Carter, according to comprehensive congressional testimony, have proved fully effective in controlling foreign intelligence collection. On the strength of this evidence, Representative McCloskey has introduced a new bill, H.R. 9745, that translates these guidelines into statutory form and makes the Executive Branch responsible for all intelligence activi-

ties involving foreign powers and foreign agents. Appropriate safeguards proposed legislation, such as the requirement "for minimization or elimination and destruction of information regarding American citizens which might incidentally or accidentally be included in an electronic information-gathering operation," according to Mr. McCloskey.

It would seem absurd to deny the US the right to timely, secure surveillance of foreign agents at a time when the number and audacity of Soviet operatives in the US are at an all-time high.

The Test Ban Treaty

The Administration's policy on a "zero yield" Comprehensive Test Ban Treaty (CTBT), ostensibly cast in concrete when President Carter signed PDM-38 on May 20, 1978, without concurrence by either the Joint Chiefs of Staff or the Department of Energy (DOE), is undergoing an agonizing reappraisal.

Catalyst for reopening the case was a high-powered White House meeting in mid-June requested by Energy Secretary James R. Schlesinger. Billed as a fifteen-minute meeting, it went to an hour and a half and reportedly caused the President to comment, "You gave me a lot to think about."

Highly placed sources told this column that several participants reached the conclusion that essential information concerning the effects of halting all nuclear testing had not reached the President, even though that information had been briefed to congressional committees by Defense Department and DOE witnesses, including the then-acting Chairman of the Joint Chiefs of Staff, Gen. David C. Jones.

Specifically, the President did not appear read in on why DOE and the JCS consider a "zero-yield" test ban or moratorium unverifiable. Neither did he seem to be aware of the fact that the Soviet negotiators had rejected a central safeguard requested by the US as unacceptably intrusive. This would involve placing some thirty telesismic arrays on Russian territory. The only monitoring scheme acceptable to the Soviets is sharing data from some five or six Soviet-built seismic detectors, an arrangement deemed wholly inadequate by most US experts. (Even the full complement of arrays coupled with on-site inspections

could not detect low-yield Soviet testing in the view of congressional sources.) (Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110105-7 would have served mainly to dilute political opposition to a cessation of testing.)

The persuasiveness of the evidence presented by Dr. Schlesinger and two DOE laboratory directors appears to have caused changes in the Administration's position on this issue of pervasive importance to national defense. The White House—at a Special Coordinating Committee (SCC) meeting late in June—decided to limit any Comprehensive Test Ban Treaty to three rather than five years, and decreed that renewal thereafter would require the approval of both the Executive Branch and the Senate. The same cabinet-level meeting also decided to insist on the need of continued low-yield "controlled" testing—at the level of a few hundred pounds—even though Paul Warnke, Director of the Arms Control and Disarmament Agency, reportedly had threatened to resign if the Administration reneged on "zero yield."

Other proposed safeguards, viewed by congressional experts as of a more cosmetic than curative nature, include firm provisions for maintaining US R&D and production capabilities, and constant readiness to resume testing. The latter safeguard is important; it took the US more than a year to resume full-scale testing after the Soviets renounced the bilateral test moratorium in 1961.

Congressional opposition to a CTBT appears formidable and growing, a fact that the Administration seems to recognize. During recent congressional testimony, Defense Secretary Harold Brown disclosed that CTBT would not be concluded until after SALT II. In addition to questioning the wisdom of entering into an essentially unverifiable accord (see p. 9, April '78 issue), relevant committees of the House and Senate have urged that the Threshold Test Ban Treaty and the Peaceful Nuclear Explosion Treaty that went into effect more than two years ago should be ratified before the Senate considers CTBT, and that weapon systems allowed under SALT II should be tested adequately before a CTBT goes into effect.

The Senate Armed Services Committee, at the behest of Sen. Henry M. Jackson (D-Wash.), plans to hold hearings on the historic and technical aspects of test bans and nu-

clear weapons reliability and safety. The purpose is to compile an authoritative public record of the grave consequences of plunging headlong into a halt of nuclear testing. There is widespread concern that the Administration may bypass the Senate's seemingly strong opposition to a "zero-yield" test ban treaty by seeking a trilateral moratorium with the Soviets and the British. England's Prime Minister James Callaghan, during a US visit in June 1978, reportedly made clear that his politically hard-pressed labor government was keenly interested in going before the British voters at the coming elections in the role of a "peacemaker."

The PRC on Superpowers

The Foreign Minister of the People's Republic of China, Mr. Huang, unleashed a lengthy harangue against the "superpowers" during the recent United Nations' Special Session on Disarmament. His polemic was noteworthy since he reserved his most scathing language for the USSR, whose global strategy he described as being "to control and monopolize Europe, to weaken and squeeze out the influence of the other superpower [the US] in all parts of the world, and ultimately to supplant the other superpower and establish its own hegemony over the world. Facts show that this superpower flaunting the label of socialism is more aggressive and adventurous than the other superpower; it is the most dangerous source of a new world war and is sure to be its chief instigator."

In another comment—one that the US arms control lobby should heed—the PRC's foreign minister dissected SALT: "In the eight years of SALT, the Soviet Union has brought its once backward nuclear arsenal up to par with that of the other superpower." He held out no hope that the next round of SALT would slow "social-imperialism," (read the Soviet Union) in its rapid expansion of "armaments of all kinds with a view to achieving military supremacy over its rival."

A US MRBM?

The Senate Armed Services Committee, at the initiative of Sen.

Thomas McIntyre (D-N. H.) and Sen. Jake Garn (R-Utah), recommended funding preliminary USAF design work of a medium-range ballistic missile for theater forces. Alternatives, according to the committee, could "include modifications of current Pershing, Patriot, and Minuteman missiles, or the development of a new missile." Range of the proposed new theater ballistic missile could be anywhere from 700 to 1,500 miles. One of the candidate designs is a derivative of Minuteman III, using its second and third stages and guidance system.

Senator Garn sees a compelling incentive for deploying MRBMs—which are not covered by SALT—because such weapons, he told this column, "would significantly reduce the risk of surprise attack, provide a theater ballistic missile comparable to the Soviet camp's formidable SS-20 and older SS-4s and SS-5s, and provide the advantage of quick response and improved penetrability over the cruise missile."

The US Navy's Poseidon submarines assigned to the US European Command fail to provide "the combined advantage of accuracy and timeliness of a land-based mobile MRBM," according to Senator Garn. Also, these submarines, he warned, "might encounter severe communications problems in a complex electronic environment, thus further reducing their effectiveness to execute time-urgent attack on unplanned targets, unless they risked detection and exposure by two-way radio communications. Moreover, the mobile land-based MRBM is highly controllable, far more flexible and survivable, and is less costly than the SLBM."

Washington Observations

- Even though opposed by many senior CIA analysts, Adm. Stansfield Turner, Director of Central Intelligence, is bringing a new approach to the formulation of US intelligence estimates and assessments. In the past, the intelligence community confined itself to presenting military and other information pertaining to the Soviet Union and other foreign powers. These estimates served as a basis for "net assessments" done under the aegis of interagency groups that evaluated US vs. Soviet capabilities. Net assessments now are being made under the direction of the Director of Central Intelligence. Old-line intelligence experts

are chary of this approach because it preempts the Defense Department in the area of its principal expertise, the forecasting of US military capabilities. Also, the new comparative assessments usually rely on optimistic long-term planning documents—unencumbered by budgetary realities—for forecasting US capabilities.

- A reportedly "very tough" letter by Defense Secretary Harold Brown has stiffened the Administration's stance regarding range limitations for air-launched cruise missiles (ALCMs) at the SALT negotiations in Geneva. Dr. Brown persuasively argued that the so-called "odometer" range of ALCMs must be pegged at forty percent above the straight line limit of these weapons. Reason is that cruise missiles must fly a zigzag path; in order to penetrate 2,500 kilometers—the proposed SALT II protocol limit—their actual flying range must be at least forty percent greater.

- ACDA Director Paul Warnke's campaign—supported by key State Department figures—to declare a moratorium on producing Special Nuclear Materials (SNM—the principal element of nuclear weapons) has gone sour in light of forceful opposition by technical experts. Crux is that the half-life of some SNMs is twelve years. As warheads containing these SNMs reached the half-life point, weakening US deterrence capabilities would invite nuclear proliferation by allied nations and induce strategic instability. The FY '79 SNM budget request is about \$904 million, compared to about \$675 million last year.

- On May 18, 1978, a red-letter day in high-energy physics, the Lawrence Livermore Laboratory's twenty-laser Shiva system trained 26,000,000 watts of optical power in ninety-five trillionths of a second on a "heavy" hydrogen target the size of a grain of sand to achieve 7.5 billion fusions. The historic experiment points the way toward larger-scale, economically viable duplication of the continuous thermonuclear "burns" by which the sun and other stars generate essentially unlimited power. By the mid-1980s, follow-on US systems—Livermore's even larger Nova system and Los Alamos Laboratory's carbon dioxide laser—are expected to achieve a "break even," by producing as much fusion energy as the laser focuses on the target.